

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHARLES R. GORTON,

Plaintiff,

v.

W.J. SULLIVAN,

Defendants.

1:05 CV 354 LJO DLB P

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT CONSTRUED AS  
MOTION FOR DEFAULT  
JUDGMENT  
[Doc. 25]

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. §1983. On November 14, 2006, the Court issued an order directing the United States Marshal to serve process upon defendant Bick. On December 13, 2006, plaintiff filed a document entitled "Motion for Summary Judgment" wherein plaintiff argues that defendant has failed to respond to the complaint and therefore "summary judgment" should be awarded.

The Court construes plaintiff's motion as a request for default judgment and HEREBY DENIES the motion. The docket does not reflect that defendant Bick has been served and therefore his time to respond has not yet expired. By separate Order, the Court will direct the Marshal to

///

///

1 provide a status report regarding service of Defendant Bick.

2  
3 IT IS SO ORDERED.

4 **Dated: September 5, 2007**

**/s/ Lawrence J. O'Neill**  
UNITED STATES DISTRICT JUDGE